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January 10, 2005

Dominique Dillenseger, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2005 JAN 11 A 11:30

Re: **MUR 5410**
Oberweis Dairy, Inc.
Robert Renaut, President and CEO of Oberweis Dairy, Inc.

Dear Counsel Dillenseger:

Oberweis Dairy, Inc. and Robert Renaut, President and CEO of Oberweis Dairy ("Respondents") respectfully submit this reply and relevant material to the Commission's finding that there is reason to believe that Respondents violated 2 U.S.C. § 441(b), as detailed in the Factual and Legal Analysis attached to Chairman Bradley Smith's letter dated December 14, 2004. Since 1998, Oberweis Dairy has advertised its dairy and home delivery products on cable television, radio and print media. Respondents confirm that the "Sunny Side Up" advertisement was the only Oberweis Dairy ad aired within 120 days of the March 16, 2004 Primary Election. The "Sunny Side Up" ad aired for three weeks in December 2003 and three weeks in January 2004. Attached as Exhibit A is a CD copy of the 30-second "Sunny Side Up" ad.

Definition of "Contribution" under 2 U.S.C. § 431(8)(A)(i)

The term "contribution" is defined by 2 U.S.C. 431(8)(A)(i) "any gift subscription, loan, advance, or deposit of money or anything of value made by any person *for the purpose of influencing any election for Federal office.*" (emphasis added). The corporate advertisements run by Oberweis Dairy, including the "Sunny Side Up" advertisement, are not "contributions" as defined by 2 U.S.C. § 431(8)(A)(i) because those advertisements were not "made by [Oberweis Dairy] for the purpose of influencing any election for Federal office." In fact, none of the Oberweis Dairy advertisements advocate the election of Mr. Oberweis for the U.S. Senate, make any mention of Mr. Oberweis' candidacy for the U.S. Senate, or contain a political message of any kind. Rather, the readily apparent purpose of the Oberweis Dairy advertisements was to promote the home delivery of Oberweis Dairy's milk products and its ice cream stores.

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Accordingly, none of the Oberweis Dairy advertisements are "contributions" as defined by U.S.C. 431(8)(A)(i) and therefore do not violate 2 U.S.C. § 441b.

Advice of Counsel Defense

To the extent the Commission maintains that Oberweis Dairy's "Sunny Side Up" advertisement violates 2 U.S.C. § 441b, civil penalties are not warranted in this case because Respondents aired the advertisement after being advised by legal counsel that the advertisement did not violate federal election laws.

In June 2003, while Mr. James Oberweis was considering running for U.S. Senate, Respondents sought advice of legal counsel regarding the airing of any Oberweis Dairy corporate ads and compliance with federal election laws. Respondents requested and received a written opinion letter from legal counsel on July 7, 2003 confirming the ability of Oberweis Dairy, Inc. to engage in television, cable, radio or satellite advertising as long as the advertising was not aired within thirty (30) days of the March 16, 2004 Primary Election. Counsel also advised Respondents that such advertisements would not violate federal election laws. The opinion letter further states that legal counsel's analysis had been confirmed with the Federal Election Commission's hotline. A copy of the opinion letter is attached as Exhibit B

In *Federal Election Commission v. Friends of Jane Harman*, 59 F. Supp. 2d 1046, 1057-59 (C.D. Cal. 1999), the Federal Election Commission brought an enforcement action against defendant Friends of Jane Harman and Jacki Bacharach, treasurer for the Harman Campaign, (collectively "the Defendants") arising out of a fundraising event held for former United States Representative Jane Harman at the headquarters of Hughes Aircraft Company. Although the Court concluded that certain aspects of the fundraising event violated Section 441b(a) of the Federal Election Act, the Court held that civil penalties and disgorgement were inappropriate because the Defendants reasonably relied upon the advice of counsel that the fundraiser was conducted in a lawful manner. *Id.* at 1058-59. Specifically, the Court found that:

The absence of evidence that [D]efendants intended to accept improper contributions is a significant factor in determining whether disgorgement or a penalty is appropriate. In defending this litigation, [D]efendants argue that they relied upon the advice of Hughes' counsel. The Court concluded that this fact is relevant in evaluating [D]efendants' belief that their conduct was lawful.

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[I]t was reasonable for [Defendants] to rely on the representation that Hughes' counsel had determined that the fundraiser was conducted lawfully. Consequently, the Court finds that [D]efendants' belief that the fundraiser was in compliance with federal election law is relevant to demonstrating [D]efendants'

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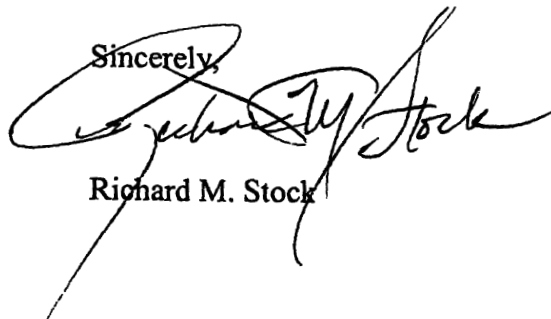
good faith. Moreover, even if the advice of counsel defense were not available, the FEC has failed to show that the [D]efendants acted in bad faith.

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Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Stock", written over the printed name.

Richard M. Stock

Enclosures
RMS/dg

cc: Robert Renaut
Christopher J. Barber, Esq
Michael A. Nicolas, Esq

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AFFIDAVIT OF ROBERT R. RENAUT

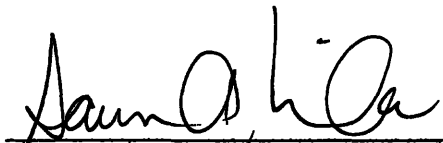
I, Robert R. Renaut, being first duly sworn upon oath, state as follows:

1. I am the President and CEO of Oberweis Dairy.
2. I have read Respondents' reply to the December 14, 2004 letter of Chairman Bradley Smith and attached Factual and Legal Analysis of the Federal Election Commission (the "Reply").
3. The factual statements contained in the Reply are true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.


Robert R. Renaut

SUBSCRIBED and SWORN to before me
this 6th day of January 2005.


Notary Public

